

**Before the**  
**DEPARTMENT OF COMMERCE**  
**National Telecommunications and Information Administration**  
**DEPARTMENT OF AGRICULTURE**  
**Rural Utilities Service**  
**Washington, D.C.**

In the matter of	)	
	)	
American Recovery and Reinvestment	)	Docket No. 090309298-9299-01
Act of 2009 Broadband Initiatives	)	
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**COMMENTS OF STAYTON COOPERATIVE TELEPHONE COMPANY**

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*On Behalf of Stayton Cooperative  
Telephone Company*

April 13, 2009

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Stayton Cooperative Telephone Company (SCTC) offers these comments in response to the March 12, 2009, joint public notice inviting interested parties to submit comments on certain designated topics that will assist the (a) National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, in establishing and administering the Broadband Technology and Opportunities Program (BTOP), and (b) Rural Utilities Service (RUS), U.S. Department of Agriculture, in implementing its expanded authority to make grants and loans for the deployment and construction of broadband systems.<sup>1</sup>

In authorizing BTOP, Congress seeks to accelerate broadband deployment in unserved and underserved areas, and to ensure that the strategic institutions likely to create jobs or provide significant public benefits have broadband connections of a quality and speed that compares favorably to urban areas and other surrounding communities. In expanding RUS's broadband

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<sup>1</sup> See, Section 6001 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. 111-5, 123 Stat. 115 (February 17, 2009), which requires NTIA, in consultation with the Federal Communications Commission, to establish the Broadband Technology and Opportunities Program. The Recovery Act further establishes authority for RUS to make grants and loans for the deployment and construction of broadband systems.

authority, Congress seeks to improve access to broadband in areas without service or that lack sufficient access to high-speed broadband service to facilitate economic development.

## **I. INTRODUCTION**

Founded in 1955 as a member-owned cooperative, SCTC offers enhanced telecommunications, long distance, and broadband services in the Santiam Canyon area of Oregon. SCTC operates as an eligible telecommunications carrier (ETC) and incumbent local exchange carrier in the Stayton exchange, which includes the communities of Stayton and Sublimity, Oregon. SCTC's subsidiary, Peoples Telephone Company, operates as an ETC and incumbent local exchange carrier in nearby Lyons, Oregon. In addition, SCTC has developed competitive local exchange carrier operations through a subsidiary, and offers CLEC services in rural Aumsville, Oregon, as well as ISP services in a broader region, including Salem.

With a 2000 census population of 6,816, Stayton is the largest community served by SCTC, and all of SCTC's service areas are within an hour's drive of the state capital, Salem.

SCTC is a former RUS borrower and, as an ETC, a recipient of various Universal Service Fund (USF) support mechanisms, and has responsibly used this funding support to enhance its broadband capability and services. Throughout its local exchange areas, SCTC offers nearly ubiquitous DSL service, ranging in speeds from 1.5 Mbps download/512 Kbps upload, to 6 Mbps download/1 Mbps upload. SCTC, as a matter of course, consistently seeks to maximize the broadband potential of its existing plant. That said, SCTC remains ever mindful that its last-mile copper network poses limitations that will only become more significant with time.

## II. EXECUTIVE SUMMARY

### NTIA Broadband Technology Opportunities Program

1. Grant funds should not be apportioned by category, nor should a rigid scorecard based on number of purposes served be employed to evaluate applications; rather, applications should be evaluated on their merit and in the totality.
2. The states' role should be consultative, not outcome determinative, and should focus on the mandatory one grant each state will recommend for an award.
3. Awarding grants related to network deployment directly to broadband providers serves the public interest by ensuring that NTIA maintains the most direct oversight on how the grantee uses its funds.
4. Selection criteria should be transparent, merit-based, evaluated in their totality, and should include the following factors:
  - a. Job creation and preservation
  - b. Shovel-readiness
  - c. Operational fitness and experience
  - d. Whether and to what extent the proposed project leverages existing facilities
  - e. Project cost – taking into account the network's expected useful life, as well as cost per customer and cost per mile analyses.
  - f. Available speeds, including a network's upgrade potential and longevity
  - g. Affordability of end-user services
  - h. Public interest opportunities and goals served
5. Broadband mapping initiatives must balance concerns about competitively sensitive information and the potential for predatory practices.
6. Subject to maintaining commercially reasonable debt-equity ratios, applicants should be permitted to use loan proceeds to support the 20% contribution. Project costs incurred prior to grant award—particularly engineering fees—should also count toward the 20% contribution.
7. Effective front-end screening of the project business case and applicant's operational fitness and experience, along with adequate engineering supporting the application, will help ensure that projects can be completed within the two-year timeline.
8. NTIA and RUS should work together to ensure that additional federal funding is not directed to an area where a provider is already deploying facilities with federal funding support.
9. Unserved should be identified as any community, or portion thereof, with access to dial-up services only.

10. Underserved communities should be identified as those whose available broadband speeds are substantially less than the speeds available to other communities within the surrounding area.
11. The NTIA should adopt a flexible definition of minimum broadband speeds based on the prevailing speeds available in urban areas.
12. Network interconnection obligations should be based on existing statutory schemes.

#### Rural Utilities Service

13. Grant money should be prioritized to those worthy projects where a reasonable business case cannot be made to support loan repayment; where the business case does support loan repayment, RUS should make every effort to streamline its application process to be competitive with lenders such as CoBank and Rural Telephone Finance Cooperative.
14. The Recovery Act's mandate to target "rural areas without sufficient access needed for economic development" allows for a more qualitative analysis than the NTIA's directive to identify unserved and underserved communities. In terms of economic development, communities compete with each other for potential businesses; thus, "access needed for economic development" should involve a comparative analysis of broadband availability across regional communities.
15. When considering the quality of broadband service needed for economic development, minimum bandwidth requirements should support video conferencing, with symmetrical upload/download speeds.
16. RUS should consider targeting financial assistance, whether loans, grants or some combination thereof, specifically toward the "middle mile" network facilities linking rural communities to the long-haul networks providing connectivity to the Internet.

### **III. DISCUSSION**

#### NTIA Broadband Technology Opportunity Program

##### **Item 1. The Purposes of the Grant Program**

- a. *Should a certain percentage of grant funds be apportioned to each category?*

Grant funds should not be apportioned by category, nor should a rigid scorecard based on number of purposes served be employed to evaluate applications; rather, applications should be evaluated on their merit and in the totality. The NTIA should avoid creating incentives for

applicants to propose contrived projects narrowly tailored to suit a particular purpose without regard to the fundamentals and sustainability of the project.

b. *Should applicants be encouraged to address more than one purpose?*

Yes; however, an application should not be viewed as deficient if it addresses only one purpose.

c. *How should the BTOP leverage or respond to the other broadband-related portions of the Recovery Act, including the United States Department of Agriculture (USDA) grants and loans program, as well as the portions of the Recovery Act that address smart grids, health information technology, education, and transportation infrastructure?*

The BTOP should encourage applications that potentially fall within more than one Recovery Act program, subject to the agencies' cooperative efforts to ensure that no applicant receives duplicative funding for the same project costs. Moreover, this is one area where the states' consultative role may prove particularly useful. That is, the states may be uniquely positioned to encourage the demand side and supply side to work cooperatively on identifying and fulfilling broadband needs—for example, a fiber-to-the-premise network funded by BTOP may be constructed, owned and operated by a local exchange carrier, but with capacity pre-negotiated and reserved for (i) the electric utility's smart-grid applications; (ii) connectivity of municipal offices and programs; (iii) telemedicine and health information technology applications benefitting the local medical community; and (iv) schools and libraries.

## **Item 2. The Role of the States**

a. *How should the grant program consider State priorities in awarding grants?*

State priorities—as articulated by each state—should be given particular emphasis with respect to the Recovery Act's mandate that the NTIA award at least one grant per state. States should share their respective priorities with NTIA, but the evaluative function of matching applications with those priorities should remain with the NTIA. And, beyond the one grant

awarded per state based on that state's recommendation, additional awards per state should be evaluated based on national broadband priorities and the merits of the individual projects and their related applications—and not state ranking.

*b. What is the appropriate role for States in selecting projects for funding?*

The states' role should be consultative, not outcome determinative. NTIA should be cautious of any extensive “pre-screening” conducted by the states, where such screening has the effect of removing applications from NTIA's review and selection process. Simply put, such an outcome-determinative role for the states lies outside the ambit of the Recovery Act. Put another way, a state's recommendation should not prejudice another entity with a compelling grant application in its own right.

Surely, if Congress wanted to give states a more substantive role in the process of awarding funds, the Recovery Act simply would have lumped broadband in with other direct appropriations to the states. Significantly, the Recovery Act—by designating NTIA and RUS as “gatekeepers” of the broadband stimulus funds—reflects prevailing law with respect to broadband. That is, the Federal Communications Commission (FCC) has retained regulatory authority with respect to information services, which generally refers to broadband-based Internet access, and has preempted states from exercising their telecommunications regulatory authority over such services.

States, to be sure, are uniquely positioned to play an intermediary role by identifying and assembling the needs and priorities of their county and municipal governments and non-profit institutions, giving a louder voice, in effect, to smaller constituents within the state. Construing the states' consultative role as that of a helpful intermediary also mitigates the negative potential of political gamesmanship and backroom deal-making.



Too, states will inevitably have varying levels of experience in broadband matters, which raises the potential for disparate treatment among states. Moreover, good stewardship of government funds demands avoidance of duplicative efforts—especially where additional staffing will be required at the state level. Finally, NTIA should ensure that the states’ role does not result in a *de facto* dual application process that only adds to the applicants’ costs and administrative burdens.

### **Item 3. Eligible Grant Recipients**

Many, if not most, applications to initiate or improve broadband access under BTOP will involve the construction or installation of network facilities. By designating broadband providers eligible for BTOP funds, the NTIA will have direct oversight over the entity entrusted with engineering, constructing and operating the broadband network. To be sure, eligibility of broadband providers should be conditioned on their compliance with all federal and state regulations applicable to their services, including, without limitation, registration and reporting requirements administered by the FCC. Thus, subject to regulatory compliance, NTIA should deem broadband providers eligible for BTOP funds.

### **Item 4. Establishing Selection Criteria for Grant Awards**

*a. What factors should NTIA consider in establishing selection criteria for grant awards? How can NTIA determine that a Federal funding need exists and that private investment is not displaced? How should the long-term feasibility of the investment be judged?*

Selection criteria should be transparent and merit-based, with each application being evaluated in its totality. The BTOP selection criteria should include the following factors, (without regard to order presented here):

- 1. Job creation and preservation.** Precise measurement of an application’s job creation potential will be difficult; however, the applicant and the NTIA should use

reasonable efforts to assess the proposed project's job impact potential, in both the immediate term and longer term.

**2. Shovel-readiness.** Particularly in light of the phased approach that the NTIA will use in disbursing funds, projects that are ready to commence upon funding should receive priority above those that require extensive planning efforts prior to readiness.

**3. Operational fitness and experience (sustainability).** A network installed, but not operational, is of little value to the purposes of the Recovery Act. The NTIA should assess the applicant's operational experience and favor those applications where the proposed operator has a demonstrable track-record of successful operations.

**4. Whether and to what extent the proposed project leverages existing facilities.** The NTIA should assess whether a project makes use of otherwise under-utilized existing facilities. Particularly where "middle-mile" facilities between communities already exist, projects that provide "last-mile" facilities that take full advantage of the "middle-mile" facilities should be favored. Similarly, where communities enjoy state-of-the-art "last-mile" facilities but lack access to adequate "middle-mile" facilities, the NTIA should look favorably on applications that support the "middle mile," thus making the best use of the existing "last-mile" facilities.

**5. Project cost.** The NTIA should require applicants to present project cost data in a uniform manner so as to simplify comparison. Project cost should be measured in several different ways to adjust for differences in geographic area and technology. At a minimum, applicants should provide (i) cost per customer; (ii) cost per mile; and (iii) amortized cost per year (to account for the useful life of the network).

**6. Available speeds, including a network's upgrade potential and longevity.** As discussed in greater detail below with respect to the proposed definitions of “unserved,” “underserved,” and “broadband,” an assessment of an applicant’s proposed available speeds of service should take into account the prevailing speeds available in urban areas and surrounding communities. In addition, the NTIA should favor projects that demonstrate an ability to grow and upgrade with customer demand for greater speeds over time.

**7. Affordability of end-user services.** Applicants should not be required to offer services at a particular rate; however, applications should include data regarding existing broadband speeds and prices in the community and surrounding area. Applicants should be encouraged to work with community non-profits and local governments to create innovative programs to stimulate and support demand for broadband services by disadvantaged populations.

**8. Public interest opportunities and goals served.** In fitting with the stated purposes of BTOP under the Recovery Act, NTIA should assess whether and to what extent a proposed project satisfies public interest needs and goals. In this regard, “public interest” should be defined broadly in a manner supportive of the relevant communities, and may include economic development opportunities (in communities with a large population of displaced workers, for example), as well as opportunities to serve lower income, minority, disabled, elderly and other vulnerable populations.

The foregoing selection criteria should be evaluated as a total package. Much like the evidence making up the “record” in an administrative or judicial proceeding, the selection criteria must be evaluated together in determining the “probative value” or weight accorded one application versus another. And, a decision on a particular application should be based on the

whole “record” relating to the application. A point system cannot totally replace looking at the probative value of the “evidence” as a whole.

#### **Item 8. Broadband Mapping**

To make the broadband inventory mapping undertaking worthwhile, the data collected should tie into and inform the identification of unserved and underserved communities over time. As the need for greater granularity in reporting increases, so does the need for protection against anticompetitive behavior and predatory practices resulting from potential access to competitively-sensitive information. As much as possible, the reporting requirements should rely on publicly-available information, particularly with regard to pricing and available speeds.

#### **Item 9. Financial Contributions by Grant Applicants**

Rather than creating express conditions justifying waiver of the 20% contribution requirement, NTIA should clarify how the 20% contribution will be calculated and minimize potential situations where a waiver might be requested.

Specifically, subject to maintaining commercially reasonable debt-equity ratios, applicants should be permitted to use loan proceeds to support the 20% contribution. For example, an applicant may seek an RUS loan for a portion of the project costs, and a BTOP grant for the remaining portion. The application process should elicit adequate financial information from the applicant to ensure that the applicant is not so highly leveraged that its potential inability to service its debt requirements jeopardizes the completion or sustainability of the project.

In addition, project costs incurred prior to a grant award—particularly engineering fees—should also count toward the 20% contribution. Indeed, the NTIA should encourage applicants to conduct detailed engineering surveys and beginning planning before submitting applications.

While this pre-grant activity imposes costs on the applicant, it also makes for a more informed application review and improves timeliness of performance post-award. Significantly, pre-grant costs incurred by the applicant decrease the amount of post-grant funding required to complete the project. As such, unless the pre-grant costs will be reimbursed by the funding, such costs should count toward the applicant's satisfaction of its 20% contribution.

With these two clarifications in place, the 20% contribution requirement should be waived only in extremely limited circumstances and only for nonprofit entities.

#### **Item 10. Timely Completion of Proposals**

As discussed in Item 4 above, the NTIA should assess the proposed operator's fitness and experience during the application process. The applicant should disclose the vendors and suppliers it intends to use, as well as identify and describe the phases of its implementation—ensuring that the applicant has adequately developed its implementation plans. At the same time, all the planning in the world cannot prevent unforeseen equipment shortages or price spikes, and grantees should not be penalized for such exigencies. That said, effective front-end screening of the project business case and applicant's operational fitness and experience, along with adequate engineering supporting the application, will help ensure that projects can be completed within the two-year timeline.

#### **Item 12. Coordination with USDA's Broadband Grant Program**

NTIA and RUS should implement a robust review system to ensure that additional federal funding is not directed to an area where a provider is already deploying facilities with federal funding support. Such a review already occurs with respect to existing RUS loan programs; no public benefit would be served by using federal funding to subsidize a competitor of an existing funding recipient. To be sure, a recipient of federal funding should not be

permitted to “cherry-pick” only the most attractive areas for deployment—as such a tactic would only prolong the nation’s goal of achieving ubiquitous broadband availability.

### **Item 13. Definitions**

*a. For purposes of the BTOP, how should NTIA, in consultation with the FCC, define the terms “unserved area” and “underserved area?”*

The definitions of unserved and underserved communities should allow for a flexible, comparative analysis suited to the community need and location. Clearly, a community with access to dial-up services only would be unserved. Even within a service area where most users are able to access broadband service, there may be neighborhoods where only dial-up is available. The definition of unserved should be open enough to include these neighborhoods, or “pockets” of unserved communities.

Underserved communities should be identified as those communities whose available broadband speeds are substantially less than the speeds available to other communities within the surrounding area. The purpose should be to identify areas where the ILEC has failed to make the necessary investments in maintenance and upgrades to support a reasonable level of broadband access consistent with the surrounding communities. This approach matches availability with customer demand more effectively than a standard tied strictly to a certain number of providers. For example, under the existing RUS broadband loan program, any rural area with less than four competitors could be deemed underserved and potentially eligible for funding. That may be a reasonable conclusion if the three existing competitors in a particular rural market offer only the minimum threshold broadband service; however, if there are two existing competitors offering fiber-based broadband services at potentially limitless speeds, it seems disingenuous to claim, qualitatively-speaking, such market is truly underserved.

Finally, the consideration of whether a community is unserved or underserved should take into account the target market of the provider's services. For example, if the only broadband provider is a cable company that targets residential customers, the business market in the community is arguably unserved.

*b. How should the BTOP define "broadband service?"*

The NTIA should adopt a flexible definition of minimum broadband speeds based on the prevailing speeds available in urban areas. A flexible definition of broadband should serve to encourage sustainable and adaptable technology.

*c. How should the BTOP define the nondiscrimination and network interconnection obligations that will be contractual conditions of grants awarded under Section 6001?*

Network interconnection obligations should be based on existing statutory schemes. The Recovery Act is an attempt to stimulate the recessionary economy and is not the appropriate vehicle for implementing drastic re-writes of existing legislation and regulations. Recipients of stimulus funding should not face a different set of regulations than other companies who do not receive funding. The NTIA should avoid imposing any requirements that would have the effect of overturning existing laws or regulations. Doing so would inevitably lead to costly and prolonged litigation—definitely not the goal of the Recovery Act.

#### Rural Utilities Service

**Item 1. What are the most effective ways RUS could offer broadband funds to ensure that rural residents that lack access to broadband will receive it?**

Grant money should be prioritized to those worthy projects where a reasonable business case cannot be made to support loan repayment; where the business case does support loan repayment, the RUS should make every effort to streamline its application process to be competitive with lenders such as CoBank and Rural Telephone Finance Cooperative. RUS has

extensive experience with traditional infrastructure and broadband loans. Regardless of prevailing views on the efficacy of the existing broadband loan program, RUS's experience should not be wasted or otherwise disregarded. That said, RUS should be challenged to use its experience to streamline the Recovery Act programs. Entities like CoBank and Rural Telephone Finance Cooperative (RTFC) have successfully and prudently funded broadband deployments by rural telecom carriers for years. Particularly with respect to its evaluation of project business cases and applicant financials, RUS should give weight to the prudent and proven market-based standards and benchmarks employed by CoBank and RTFC in their loan review processes.

**Item 2. In what ways can RUS and NTIA best align their Recovery Act broadband activities to make the most efficient and effective use of the Recovery Act broadband funds?**

RUS and NTIA should establish a joint application form, with unique appendices or schedules as need to reflect the program priorities. Application review status and estimated dates for awards should be available to applicants via a web interface as a means of assisting applicants with their own internal planning and funding requirements.

**Item 3. How should RUS evaluate whether a particular level of broadband access and service is needed to facilitate economic development?**

The Recovery Act's mandate to target "rural areas without sufficient access needed for economic development" potentially allows for a more qualitative analysis than the NTIA's directive to identify unserved and underserved communities. In terms of economic development, communities compete with each other to recruit potential businesses. A community with available broadband speeds of 100 Mbps will undoubtedly be more attractive to many businesses than a community with only one provider, offering service at 768 Kbps. Thus, in considering which applications best deliver "access needed for economic development," RUS's evaluation should involve a comparative analysis of broadband availability across regional communities.



When considering the quality of broadband service needed for economic development, minimum bandwidth requirements should support video conferencing, with symmetrical upload/download speeds. Additional factors weighing on the quality of broadband service should be driven by the requirements of business located in the relevant area. An agriculture-based community may have very different requirements from a mining community, which may be differ still from a manufacturing community. Applicants should be encouraged to perform enough market research to present a compelling case that—for a particular community—the proposed project will significantly improve the quality of broadband available to an extent commensurate with the character of the business needs of the community, so that the community can effectively compete with other communities to recruit and support business growth.

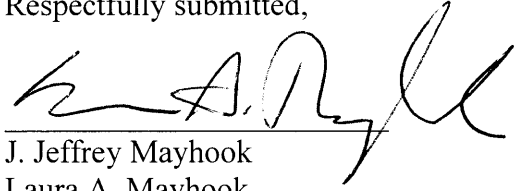
**Item 4. In further evaluating projects, RUS must consider the priorities listed below. What value should be assigned to those factors in selecting applications? What additional priorities should be considered by RUS?**

RUS should consider targeting financial assistance, whether loans, grants or some combination thereof, specifically toward the “middle mile” network facilities linking rural communities to the long-haul networks providing connectivity to the Internet. Moreover, the criteria outlined in Item 4 above with respect to BTOP apply similarly to RUS. In particular, RUS should carefully consider the project cost, shovel-readiness, operator fitness and experience, and sustainability of the project.

#### **IV. CONCLUSION**

As a long-term, vested stakeholder in matters of rural broadband deployment, SCTC thanks the NTIA and RUS for the opportunity to provide comment on these crucial matters impacting the implementation of the broadband portions of the Recovery Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Mayhook', with a horizontal line drawn underneath it.

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